

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-003636

02/10/2014

HONORABLE LISA DANIEL FLORES

CLERK OF THE COURT
M. Nielsen
Deputy

CHAUNCEY RANCH OFFICE
CONDOMINIUM ASSOCIATION

QUINTEN T CUPPS

v.

NORTH SCOTTSDALE PAIN CENTER L L C,
et al.

SCOTT H ZWILLINGER

D ROSAS INTERIOR ARCHITECTURE
DESIGN GROUP
NO ADDRESS ON RECORD
DINA ROSAS
5958 E CORRINE DR
SCOTTSDALE AZ 85254
JOE ROSAS
NO ADDRESS ON RECORD

MINUTE ENTRY

Courtroom 412 – East Court Building

10:05 a.m. This is the time set for Oral Argument regarding Defendant North Scottsdale Pain Center, LLC's Motion for Judgment on the Pleadings, filed November 22, 2013. Plaintiff is represented by counsel, Augustus Shaw. Defendant North Scottsdale Pain Center, LLC is represented by counsel, Scott H. Zwillinger.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding case status.

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Oral argument is presented.

IT IS ORDERED taking this matter under advisement.

10:28 a.m. Matter concludes.

LATER:

The Court heard oral argument on Defendant's Motion for Judgment on the Pleadings, filed November 22, 2013. A response and reply were filed.

The Court considered the parties' papers, and requested to be provided with a complete copy of the articles of the CC&R's that were referenced in their arguments. Counsel for both parties agreed to allow the Court to consider the articles of the CC&R's that were discussed but not attached to the complaint.

For reasons more fully stated in Plaintiff's response, the Court finds that the Article 11 "Dispute Resolution" process does not apply to this situation in which Defendant admittedly installed a door along a common wall without Association approval. The Association filed suit to compel the Unit Owner to comply CC&R § 4.3 which requires prior written consent of the Association Board before altering a perimeter or party wall or making any structural alteration within a unit. Although part of Article 12 which is titled "General Provisions," §12.1 quite specifically applies to enforcement of the CC&R's and clearly authorizes the Association to file a suit at law or in equity to enjoin a violation of, or compel compliance with, the CC&R's.

The Court rejects Defendant's effort to cast the dispute as one over a design defect to shoehorn it into Article 11's dispute resolution provisions. While the design of Defendant's build-out would have been considered by the Board when it decided whether to approve, the problem here is that Defendant failed to seek approval at all.

For these reasons,

IT IS ORDERED denying on Defendant's Motion for Judgment on the Pleadings, filed November 22, 2013.

On the Court's own motion,

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IT IS ORDERED ordering the parties to submit a Joint Scheduling Order, as follows:

Counsel and/or the parties are to meet personally to discuss all of the matters set forth in Rule 16(b), Ariz. R. Civ. P. Counsel and/or the parties shall prepare and file with the Court, no later than **5:00 p.m. on March 12, 2014**, a Joint Scheduling Order, for discovery, motion and disclosure deadlines.

If the parties agree to the dates, they should prepare an Order **in the form attached hereto**, containing the provisions which are applicable to their case. For example, paragraph one of the Order set forth below need not be included in the parties' proposed Order if the parties intend to disclose their experts' identity and opinions at the same time they disclose their experts' areas of testimony. Similarly, if the parties agree to simultaneously disclose the identity and opinions of their expert witnesses, they need not include in their proposed Order the language set forth in paragraph 2a. and b., below.

The proposed Order shall include specific dates (June 1, 2013, rather than 45 days from close of discovery). Do not incorporate a firm trial date in the proposed Order.

If counsel are unable to agree on any of the items that are to be included in the Order, the reasons for their inability to agree shall be set forth in a separate document and not in the proposed Order.

The Court will review the proposed Scheduling Order. If all is in order, the Court will set a status conference close to the discovery cutoff date. At the status conference, if the parties have completed discovery and are ready for trial, the Court will set firm dates for the final pretrial management conference and the trial. If the parties are not ready for trial, the matter will be placed on the Inactive Calendar for dismissal within 60 days.

If counsel feel a pretrial conference is still necessary at this stage of the litigation, they should address the reasons why in the first paragraph of the proposed Scheduling Order.

If a Joint Scheduling Order is not timely submitted, the Court will place the matter back on the Inactive Calendar for dismissal.

NOTE: COUNSEL SHALL UPLOAD AND E-FILE ALL PROPOSED ORDERS IN WORD FORMAT ONLY TO ALLOW FOR POSSIBLE MODIFICATIONS BY THE COURT.

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ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.